

****E-Filed 12/2/08**
FOR PUBLICATION**

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

NOEMIA CARVALHO, on behalf of herself and
others similarly situated,

Plaintiff,

v.

EQUIFAX INFORMATION SERVICES, LLC;
EXPERIAN INFORMATION SOLUTIONS, INC.;
and TRANSUNION LLC,

Defendants.

Case Number C 08-1317 JF (HRL)

**ORDER GRANTING MOTIONS
FOR SUMMARY JUDGMENT,
DENYING MOTION TO CERTIFY
CLASS, AND DENYING MOTION
FOR LEAVE TO AMEND**

RE: Docket Nos. 72, 78, 95, 98, 101

Plaintiff Noemia Carvalho ("Plaintiff") alleges that Equifax Credit Information Services, LLC ("Equifax"), Experian Information Solutions, Inc. ("Experian"), and TransUnion LLC ("TransUnion") (collectively, "Defendants") violated her rights under the California Consumer Credit Reporting Agencies Act ("CCRAA"), which requires consumer credit reporting agencies to investigate disputed credit information and to cooperate with a consumer's investigation inquiries. Cal. Civ. Code § 1785.16. Plaintiff alleges that Defendants failed to conduct a reasonable reinvestigation of a disputed debt appearing on her credit report, and failed

adequately to apprise her of the reinvestigation procedures used. Plaintiff now seeks to certify two classes of similarly situated California consumers. The first class comprises consumers allegedly injured by credit report reinvestigation procedures that do not comply with § 1785.16 of the CCRAA. The second class comprises consumers who allegedly did not receive an adequate description of those procedures, as required by the statute. Plaintiff seeks injunctive relief and, alleging that Defendants knowingly and intentionally violated the CCRAA, an award of punitive damages. Defendants move for summary judgment on all claims and request that the Court decide their potentially case-dispositive motions before addressing Plaintiff's motion for class certification.¹ Plaintiff moves the Court for leave to amend her complaint to add claims for negligent violation of the CCRAA and its counterpart provisions in the federal Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681i. As set forth in detail below, Plaintiff is unable to identify a factual inaccuracy on her credit report that Defendants could have discovered in conducting any legally-mandated reinvestigation of the disputed debt. Because such a showing is essential to each of Plaintiff's claims, including those that Plaintiff seeks to add by amendment, Defendants' motions for summary judgment will be granted. Plaintiff's motion for class certification will be denied as moot, and her motion for leave to amend the complaint will be denied on the ground that amendment would be futile.

I. FACTUAL BACKGROUND

On October 19, 2001, Plaintiff visited Bayside Hospital ("Bayside") seeking treatment for knee pain. Deposition of Noemia Carvalho, Vol. 1, Johnston Decl., Ex. A ("Pl. Depo. I"), at 35:19-22; Deposition of Noemia Carvalho, Vol. 2, Johnston Decl., Ex. B ("Pl. Depo. II"), at 372:3-11. Upon her arrival, and before receiving any medical care, Plaintiff completed and signed an Agreement with Bayside (the "Agreement") establishing her responsibility for payment for any medical services rendered. The Agreement included the following provision:

¹ "Where the defendant assumes the risk that summary judgment in his favor will have only stare decisis effect on the members of the putative class, it is within the discretion of the district court to rule on the summary judgment motion first." *Wright v. Schock*, 742 F.2d 541, 544 (9th Cir. 1984).

1 Bayside Medical Group, Inc., will bill your insurance as a courtesy to you. If your
 2 insurance does not pay the claim within 90 days of the date of service, the balance
 of your account will be your responsibility.

3 Pl. Depo. I, Ex. C-3. The Agreement also included the following clause: “Assignment and
 4 Release: I hereby authorize my insurance company to pay benefits directly to Bayside Medical
 5 Group, Inc. and I am financially responsible for noncovered services.” *Id.* Plaintiff has
 6 acknowledged that she understood these statements and signed the Agreement. Pl. Depo. I, at
 7 35:9-18, 40:13-42:7. After doing so, Plaintiff saw a physician who diagnosed her condition and
 8 prescribed medication. Pl. Depo. II, at 372:2, 372:13-24. The treatment resulted in a charge of
 9 \$118. *See* Pl. Depo. I, 51:1-8 & Ex. C-8. The parties dispute whether at the time of the visit
 10 Plaintiff was insured by Blue Cross or Blue Shield (or at all), and whether Bayside billed the
 11 correct insurer (or any insurer).² For the present purposes, it is sufficient to note that no insurer
 12 had paid Plaintiff’s bill within the ninety-day period prescribed by the Agreement. Accordingly,
 13 on January 15, 2002, Bayside sent Plaintiff a bill for the services she received. Pl. Depo. I, Ex.
 14 C-8. The bill indicated that Plaintiff’s insurer had declined coverage and that payment was due
 15 to Bayside within fourteen days pursuant to the Agreement.

16 Plaintiff declined to pay the bill for approximately one year, at which point Bayside sent
 17 Plaintiff a final billing notice on March 6, 2003. Pl. Depo. I, Ex. C-10. The notice indicated
 18 that if Plaintiff did not make payment in full within seven days, Bayside would transfer the
 19 account to a collection agency. *Id.* Plaintiff did not pay the bill, and Bayside assigned the debt
 20 to Credit Consulting Services, Inc. (“CCS”) for collection. *Id.* 58:23-59:23. On August 8, 2003,
 21 CCS sent Plaintiff a collection notice stating that if Plaintiff “paid [the debt] in full . . . [,] all
 22 collection activity [would] be stopped.” Frontino Decl., Ex. H. The notice also stated that “[i]t
 23 is the policy of [CCS] to report all eligible accounts to Experian, Equifax and TransUnion
 24 Credit Reporting Services.” *Id.* On September 15, 2003, CCS sent Plaintiff a letter with the
 25

26 ² Plaintiff has presented little credible evidence suggesting that Bayside billed the wrong
 27 insurer or that Plaintiff was insured at all at the time of the Bayside visit. However, as explained
 28 below, the resolution of these factual disputes would not affect the present disposition, and the
 Court will assume for the sake of argument that Plaintiff’s version of the facts is accurate.

1 reminder, in all capital letters, “IF PAYMENT IN FULL REACHES THIS OFFICE BY
2 10-8-03, THEN THIS COLLECTION ACCOUNT WILL NOT BE REPORTED ON YOUR
3 EXPERIAN, EQUIFAX, AND TRANSUNION CREDIT REPORTS. PROTECT YOUR
4 CREDIT, SEND PAYMENT IN FULL.” Pl. Depo. I, Ex. C-15. Plaintiff has acknowledged
5 that she received this notice but did not settle the debt. *Id.* at 92:25-93:20. On October 31,
6 2003, CCS sent Plaintiff a third warning letter stating: “YOU HAVE FAILED TO SEND US
7 PAYMENT. YOU HAVE IGNORED OUR PREVIOUS DEMANDS. UNLESS YOU
8 RESPOND TO THIS NOTICE IMMEDIATELY, EXPECT THE RESULTS OF YOUR OWN
9 NEGLECT. PAYMENTS MUST BE MADE TO THIS OFFICE WITHOUT FURTHER
10 NOTICE.” Pl. Depo. I, Ex. C-18. Plaintiff received this letter but did not pay the bill. *Id.* at
11 96:9-18. CCS reported the debt to Defendants, which added it to her credit report. *See*
12 Complaint, ¶ 7.

13 Upon learning that the CCS debt appeared on her credit report, Plaintiff submitted four
14 letters to Defendants disputing the validity of the debt. In her first letter of dispute, sent to
15 Defendants on September 10, 2004, Plaintiff asserted that the CCS item on her credit report was
16 inaccurate because Blue Cross should have paid the underlying debt to Bayside. Pl. Depo. I, Ex.
17 16. The letter was accompanied by sixteen pages of documentation, including (1) a benefits
18 page apparently from Plaintiff’s employer identifying “Blue Cross PPO Plan” as her “Medical”
19 plan during her employer’s 2001 benefit year, (2) copies of two insurance cards, one identifying
20 “Blue Cross/Blue Shield” and the other “Blue Cross of California” as her insurer, but neither
21 indicating a coverage year, (3) copies of correspondence Plaintiff claimed to have sent to Blue
22 Cross, but without responses from Blue Cross, (4) an Explanation of Benefits page Plaintiff
23 received from Blue Shield of California indicating that Plaintiff was not then covered by Blue
24 Shield of California, (5) copies of correspondence Plaintiff received from CCS and a credit
25 report reflecting the CCS item, and (6) a bill Plaintiff received from Bayside stating, in reference
26 to insurance coverage, “NOT ELIGIBLE AT THE TIME OF S[ERVICE] . . . PLEASE CALL
27 YOUR INSURANCE.” *See* Bochner Decl. ISO Mot. to Certify Class, Ex. A.

28 Defendants began their reinvestigations on September 20, 2004. *See* Johnston Decl., ¶

25, Ex. E; Fluellen Decl., ¶ 17; Terry Decl., ¶ 9. Defendants determined that none of the documentation submitted by Plaintiff met their documentation standards and did not consider it further.³ Consistent with their standard procedures, Defendants recorded the dispute on a Consumer Dispute Verification (“CDV”) form, which typically contains a brief description and code number characterizing the dispute, as well as the consumer’s name, address, and social security number, if available. *See* Terry Decl., ¶ 5.⁴ Defendants each sent a CDV form to the information furnisher, CCS. *See* Terry Decl., ¶ 9; Johnston Decl., ¶ 25, Ex. E; Fluellen Decl., ¶ 17. CCS sent confirmation to Defendants that the disputed entry was “accurate,” and Defendants updated Plaintiff’s file accordingly. Terry Decl., ¶ 10; Fluellen Decl., ¶ 17. Defendants also sent Plaintiff a notice summarizing the update to her file and further apprising her of options for resolving the dispute. *See* Pl. Depo I, Ex. 23; Fluellen Decl., ¶¶ 17-18; Terry Decl. ¶ 11.

On April 1, 2005, Plaintiff sent a letter to Defendants requesting (1) a description of the procedures used in reinvestigating the disputed item, and (2) inclusion of the following note in Plaintiff’s credit report: “I dispute the above Credit Consulting Services Acct. No. ***4329 on my Credit Report. These bills arose out of the medical treatment I was covered for by Blue Cross of California. For some reason that is unknown to me, they did not pay these medical bills.” *See* Terry Decl., Ex. D. Defendants responded to Plaintiff’s request in several ways. Equifax did not initiate a further reinvestigation because it did not appear that Plaintiff had

³ Defendants apparently have developed a set of guidelines designed to evaluate the authenticity and validity of documentation submitted by consumers in connection with disputed items on their credit reports. TransUnion, for example, only considers documents submitted by consumers valid when they are printed on the information furnisher’s letterhead, contain the information furnisher’s contact information, and refer to the specific disputed account that can be matched to the consumer’s file. Terry Decl., ¶ 4.

⁴ CDVs are transmitted to a credit reporting agency’s information source, usually the creditor, with a request for verification and correction if necessary. *See* Terry Decl., ¶ 5. The reporting agencies review responses to CDVs and make changes or deletions as appropriate. *Id.* If the reporting agency receives no response to a CDV, the item is deleted. *Id.* After an investigation is complete, the agency sends the results of the investigation to the consumer along with an updated credit report. *Id.* ¶ 6.

1 requested one. Fluellen Decl., ¶ 18. Although it is unclear whether Equifax added Plaintiff's
2 statement of dispute to her credit file, *see* Fluellen Decl., ¶ 18, Equifax did send Plaintiff a
3 generic description of its reinvestigation procedures identical to one it already had sent Plaintiff
4 in connection with her first dispute. *See id.* TransUnion and Experian initiated further
5 reinvestigations of the disputed item using CDV forms and received confirmation from CCS
6 that the disputed item was accurate. *See, e.g.,* Terry Decl., ¶¶ 12-13; Pl. Depo. I, at 134:24-
7 136:17 & Ex. 23. TransUnion and Experian also updated Plaintiff's account to include her
8 statement of dispute, Terry Decl., ¶ 13; Pl. Depo. I 143:12-144:1 & Ex. 27, but neither agency
9 appears to have complied with Plaintiff's request for a description of the procedures used to
10 reinvestigate the dispute, *see* Pl.'s Opp. to Experian MSJ, at 5:3; Pl.'s Opp. to TransUnion MSJ,
11 at 7:6-7.

12 On June 3, 2005, Plaintiff lodged a further letter of dispute with Defendants, stating that
13 Plaintiff had "learned that the above referenced bill may have been paid if Credit Consulting
14 Service's Assignor Bayside Medical Group had timely and properly submitted my bill to Blue
15 Shield. I therefore renew my dispute on this basis." *See* Terry Decl., Ex. F. Plaintiff provided
16 no accompanying documentation in connection with this communication, but she again
17 requested a description of Defendants' reinvestigation procedures. *Id.* TransUnion, which
18 already had initiated a second reinvestigation of Plaintiff's dispute without evidence of any
19 changed factual circumstances, viewed the request as "frivolous" within the meaning of § 1681i
20 and § 1785.16 and informed Plaintiff that it would not initiate a further investigation. Terry
21 Decl., ¶¶ 14-15 & Ex. G. Equifax did initiate a further investigation and sent a CDV form to
22 CCS. When CCS again verified the accuracy of the debt, Equifax updated Plaintiff's file and
23 provided a notice to Plaintiff that summarized the results of the reinvestigation and informed
24 Plaintiff that she could request a description of the reinvestigation procedures. Experian claims
25 to have followed a similar course in addressing Plaintiff's June 2005 request. *See* Experian
26 MSJ, at 7:17-8:2.

27 On February 9, 2006, Plaintiff's counsel sent Defendants a letter again explaining that
28 Plaintiff considered the CCS entry inaccurate because Bayside had not billed her actual insurer

pursuant to the Agreement, and requesting that Defendants reinvestigate the dispute. *See* Terry Decl., Ex. H. Defendants initiated a further investigation by CDV form, and CCS once again confirmed that the disputed entry was accurate. Defendants once again updated Plaintiff's file and notified her of the results of the reinvestigation. Terry Decl., ¶¶ 16-17; Fluellen Decl., ¶ 20; Experian MSJ, at 7:17-8:2.⁵ Plaintiff thereafter filed the instant action.⁶

II. LEGAL STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate when there are no genuine and disputed issues of material fact and the moving party is entitled to prevail as a matter of law. Fed. R. Civ. P. 56; *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The Court must view the evidence in the light most favorably to the non-moving party, and all reasonable inferences must be drawn in favor of that party. *Torres v. City of Los Angeles*, 540 F.3d 1031, 1039-40 (9th Cir. 2008). The moving party bears the burden of showing that there is no material factual dispute. Therefore, the court must regard as true the opposing party's evidence, if supported by affidavits or other evidentiary material. *Celotex*, 477 U.S. at 324.

III. DISCUSSION

A. Dispute reinvestigation claims pursuant to Cal. Civ. Code §§ 1785.16(a) & (b)

Plaintiff's case turns largely on two provisions of the CCRAA, Cal. Civ. Code §§ 1785.16(a) and 1785.16(b), which set forth procedures governing a credit reporting agency's duty to reinvestigate consumer disputes. Section 1785.16(a) provides that if a consumer disputes the accuracy of

any item of information contained in his or her file . . . , and the dispute is conveyed directly to the consumer credit reporting agency . . . , the consumer credit reporting agency shall . . . reinvestigate and record the current status of the disputed information before the end of the 30-business-day period beginning on

⁵ Each defendant removed the disputed entry from Plaintiff's file at some time between July 2007 and August 2008, purportedly pursuant either to legal requirements or internal protocols. *See* Defs.' Opp. to Mot. to Shorten Time, Doc. No. 92, at 2:23-3:3.

⁶ The action initially was filed on November 20, 2006 in the Monterey Superior Court. Equifax removed the case to this Court on March 7, 2008. On April 7, 2008, Plaintiff filed a motion to remand, which was denied.

the date the agency receives notice of the dispute from the consumer or user, unless the consumer credit reporting agency has reasonable grounds to believe and determines that the dispute by the consumer is frivolous or irrelevant, including by reason of a failure of the consumer to provide sufficient information . . . to investigate the dispute. Unless the consumer credit reporting agency determines that the dispute is frivolous or irrelevant, before the end of the five-business-day period beginning on the date the consumer credit reporting agency receives notice of dispute under this section, the agency shall notify any person who provided information in dispute at the address and in the manner specified by the person.

Section 1785.16(b) requires that

[i]n conducting that reinvestigation[,], the consumer credit reporting agency shall review and consider all relevant information submitted by the consumer with respect to the disputed item of information. If the consumer credit reporting agency determines that the dispute is frivolous or irrelevant, it shall notify the consumer . . . within five business days after that determination is made that it is terminating its reinvestigation of the item of information. In this notification, the consumer credit reporting agency shall state the specific reasons why it has determined that the consumer's dispute is frivolous or irrelevant. If the disputed item of information is found to be inaccurate, missing, or can no longer be verified by the evidence submitted, the consumer credit reporting agency shall promptly add, correct, or delete that information from the consumer's file.

Plaintiff claims that Defendants (1) violated § 1785.16(a) by failing to notify her of the status of her credit disputes within the statutory time period, and (2) violated § 1785.16(b) by failing to conduct an adequate reinvestigation. Both provisions are based on the federal Fair Credit Reporting Act, which imposes substantially the same requirements. *Compare* 15 U.S.C. § 1681i(a)(1)(A) (requiring credit reporting agencies to conduct reinvestigations of disputed credit report items within 30 days of consumer lodging dispute) *with* Cal. Civ. Code § 1785.16(a) (same); *compare* 15 U.S.C. § 1681i(a)(3)-(4) (concerning determinations of frivolous disputes and credit reporting agencies' duties to consider information submitted by consumers) *with* Cal. Civ. Code. § 1785.16(b) (same). California courts treat decisions interpreting the federal reinvestigation provision, 15 U.S.C. § 1681i, as persuasive authority. *See, e.g., Olson v. Six Rivers Nat'l Bank*, 111 Cal. App. 4th 1, 12 (2003). Indeed, given the paucity of case law discussing the California reinvestigation provisions, cases interpreting § 1681i are the primary source of authority with respect to both the federal and California reinvestigation requirements.

A prima facie showing under § 1681i consists of the following elements: (1) plaintiff's credit file contains inaccurate or incomplete information; (2) plaintiff notified the credit

1 reporting agency directly of the inaccurate or incomplete information; (3) plaintiff's dispute is
 2 not frivolous or irrelevant; (4) the credit reporting agency failed to respond to plaintiff's dispute;
 3 (5) the failure to reinvestigate caused plaintiff to suffer damages; (6) actual damages, such as
 4 damages caused by humiliation, mental distress, or injury to reputation or creditworthiness,
 5 resulted to plaintiff. *See, e.g., Thomas v. TransUnion LLC*, 197 F. Supp. 2d 1233, 1236 (D. Or.
 6 2002). Defendants claim that all of Plaintiff's reinvestigation claims are barred because the
 7 credit entry giving rise to Plaintiff's four substantially identical disputes was accurate. Plaintiff
 8 claims that the disputed entry was inaccurate, but she also contends that she is entitled to an
 9 adjudication of the adequacy of Defendants' procedures irrespective of whether the entry was
 10 accurate.

11 While neither the FCRA nor the CCRAA requires on its face that a disputed credit entry
 12 contain inaccurate information, a majority of courts interpreting § 1681i have adopted such a
 13 requirement in light of the FCRA's purpose, which is to protect consumers against the
 14 compilation and dissemination of *inaccurate* credit information. *See DeAndrade v. Trans Union*
 15 *LLC*, 523 F.3d 61, 67-68 (1st Cir. 2008) (citing legislative history of FCRA and noting
 16 agreement of Ninth and Seventh Circuits that a showing of inaccuracy is required to state a
 17 claim under § 1681i); *see also Dennis v. BEH-I, LLC*, 520 F.3d 1066, 1069 (9th Cir. 2008)
 18 (endorsing rule that "§ 1681i creates no duty to reinvestigate where 'the credit report accurately
 19 reflect[s] the status of the information contained in the public records'" (quoting *Williams v.*
 20 *Colonial Bank*, 826 F. Supp. 415, 418 (M.D. Ala. 1993)). Accordingly, "if there is no genuine
 21 issue as to whether the . . . debt reported by [the reporting agencies] was inaccurate, [the
 22 plaintiff's] claim fails as a matter of law." *DeAndrade v. Trans Union LLC*, 523 F.3d at 68.⁷

23
 24 ⁷ Plaintiff criticizes the Ninth Circuit's endorsement of an inaccuracy requirement in
 25 *Dennis* and argues that two unpublished district court decisions from Alabama are "better
 26 reasoned." *See, e.g., Pl.'s Opp. to Experian MSJ*, at 15:18-16:21 (attacking *Dennis* and citing
 27 *Abbet v. Bank of America*, No. 3:04CV 01102 WKW, 2006 WL 581193 (M.D. Ala. Mar. 8,
 2006) and *Lofton-Taylor v. Verizon*, No. 05-0532-CG-B, 2006 WL 3333759 (S.D. Ala. Nov. 14,
 2006) for the proposition that reinvestigation claims may proceed regardless of whether the
 28 disputed information later is determined to be accurate). Plaintiff's contentions lack merit for
 several reasons. First, this Court obviously must follow the law as articulated by the Ninth

1 The First Circuit has explained that “[t]o determine whether a consumer has identified a
 2 factual inaccuracy on his or her credit report that would activate § 1681i’s reinvestigation
 3 requirement, the decisive inquiry is *whether the defendant credit bureau could have uncovered*
 4 *the inaccuracy if it had reasonably reinvestigated the matter.*” *Id.* at 68 (emphasis added)
 5 (citing *Cushman v. Trans Union Corp.*, 115 F.3d 220, 226 (3d Cir. 1997) (quotation marks
 6 omitted)). In *DeAndrade*, plaintiff DeAndrade purchased new windows for his home using
 7 mortgage financing arranged by the seller of the windows. *Id.* at 63. When DeAndrade and his
 8 wife obtained and reviewed the mortgage documents, they were “shocked” to find that the
 9 documents granted a mortgage on their residence, and that their signatures on the documents
 10 appeared to have been forged. *Id.* DeAndrade stopped payment on the mortgage, causing the
 11 mortgagee Bank to notify TransUnion, Experian, and Equifax of the delinquency. *Id.* at 64.
 12 DeAndrade sent a reinvestigation request and forty-nine pages of supporting documents to the
 13 reporting agencies, claiming that the mortgage had been obtained fraudulently. *Id.* TransUnion
 14 sent a CDV notice to the bank but declined to transmit any of the supporting documentation
 15 provided by the DeAndrades. *Id.* The Bank responded that the information was accurate, and
 16 TransUnion notified DeAndrade of the results of its reinvestigation. *Id.* In holding that
 17 DeAndrade had not made the prima facie showing of inaccuracy required to state a claim under
 18 § 1681i, the court concluded that DeAndrade in reality was attacking the validity of the
 19 mortgage, and that “[w]hether the mortgage is valid turns on questions that can only be resolved
 20 by a court of law, such as whether DeAndrade ratified the loan.” *Id.* at 68. This was “not a
 21 factual inaccuracy that could have been uncovered by a reasonable reinvestigation, but rather a

22
 23 Circuit. Second, the two cases cited by Plaintiff deal with provisions of the FCRA that apply
 24 exclusively to *furnishers* of credit information and thus are inapposite in the present context.
 25 Finally, although the facts of *Dennis* allowed the Ninth Circuit merely to note the existence of an
 26 inaccuracy requirement without further elaboration, the First Circuit has articulated a convincing
 27 rationale for the requirement—a rationale with which this Court has no reason to disagree. *See*
 28 *DeAndrade*, 523 F.3d at 67-68 (noting that Congress’s purpose in passing the FCRA was to
 prevent the transmission of *inaccurate* information by credit reporting agencies, and that a
 plaintiff at the very least would be unable to show damages absent a factual inaccuracy in his or
 her credit report).

1 legal issue that a credit agency such as TransUnion is neither qualified nor obligated to resolve
2 under the FCRA.” *Id.* at 68.

3 As will become clear, Plaintiff’s dispute in the instant case ultimately turns on the legal
4 question of whether the Agreement makes her liable for the hospital debt, notwithstanding an
5 alleged breach of the Agreement by Bayside. There is no dispute that (1) Plaintiff received
6 medical treatment at Bayside Hospital on October 19, 2001, (2) before receiving such treatment,
7 she completed and duly executed an agreement with Bayside whereby Bayside would bill
8 Plaintiff’s insurance as a courtesy, and whereby Plaintiff in any event was “responsible for
9 noncovered services,” Pl. Depo. I, Ex. C-3, (3) Plaintiff’s treatment resulted in a bill for \$118,
10 (4) no insurer agreed to cover the bill, (5) Bayside sent Plaintiff a final bill for \$118, (6) Plaintiff
11 did not pay the bill, (7) Bayside forwarded the debt to CCS, which sent multiple collection
12 notices and warnings of impending transmission to Defendants, (8) Plaintiff did not respond to
13 the CCS notices, and (9) CCS informed Defendants of Plaintiff’s delinquency, causing the
14 disputed item to appear on Plaintiff’s credit report.⁸ Clearly, if Bayside had accepted
15 responsibility for the debt because it billed the wrong insurer, the disputed entry on Plaintiff’s
16 credit report would have been factually inaccurate in the sense required to state a claim under §
17 1681i. *See DeAndrade*, 523 F.3d at 68 (noting that “[i]f a court had ruled the mortgage invalid
18 and TransUnion had continued to report it as a valid debt, *then* DeAndrade would have grounds
19 for a potential FCRA claim” (emphasis in original)). Plaintiff, however, has offered no evidence
20 suggesting that this is the case. Indeed, despite Plaintiff’s efforts to resolve the debt with
21 Bayside and Bayside’s purported acknowledgment that it billed the wrong insurer, Bayside
22 “continued to allow CCS to collect and ultimately credit report [sic] the account.” Bochner
23

24 ⁸ As an initial matter, the Court rejects Defendants’ reliance on Plaintiffs’ purported
25 admission that the entry was accurate. In her deposition, Plaintiff at various times confirmed the
26 series of events noted above and stated that the adverse credit entry, as reported by CCS, was
27 “accurate.” It is clear, however, that Plaintiff was referring only to the fact that CSS accurately
28 had reported the debt identified by Bayside to Defendants. Plaintiff’s contention that the entry
was inaccurate turns on whether the initial debt, as reported by Bayside, accurately reflected her
obligations.

Decl. ISO Opp. to Experian's MSJ, at 3:23-26.

Absent some evidence that Bayside revised its determination with respect to Plaintiff's liability for the debt, the ultimate issue is whether Plaintiff *legally* was bound to pay the debt in light of Bayside's alleged failure to bill the correct insurer. That issue turns on a legal construction of the Agreement between Plaintiff and Bayside. Hypothetically, a court construing the Agreement could conclude that Plaintiff became personally liable for the hospital bill as soon as the contractual ninety-day period expired without any insurer having paid the debt. However, a court also could conclude that Plaintiff assumed no contractual responsibility for the bill until Bayside timely billed Plaintiff's actual insurer. Whatever the outcome, the proper construction of the Agreement presents "a legal issue that a credit agency . . . is neither qualified nor obligated to resolve." *DeAndrade*, 523 F.3d at 68.⁹ Because her actual dispute is with Bayside, Plaintiff "has crossed the line between alleging a factual deficiency that [Defendants were] obliged to investigate pursuant to the FCRA and launching an impermissible collateral attack against" Plaintiff's apparent contractual liability for the hospital bill. *Id.*; see also *Wadley v. Equifax Information Services, LLC*, 396 F. Supp. 2d 677, 679-80 (E.D. Va. 2005) ("The FCRA does not provide a cause of action to collaterally attack an accurate credit report."); *Williams v. Colonial Bank*, 826 F. Supp. 415, 418 (M.D. Ala. 1993) ("A credit reporting agency has no duty, as a part of its reinvestigation, to go behind public records to check for accuracy or completeness when a consumer is essentially collaterally attacking the underlying credit information.").

Cases frequently may arise in which a consumer legitimately disputes a debt whose validity cannot be determined by a credit reporting agency. While a reporting agency legally may report the credit-relevant fact that a consumer has outstanding debts subject to collection, § 1681i(c) of the FCRA and § 1785.16(d)(5) of the CCRAA provide a remedy for consumers, allowing them to record their version of the dispute in their credit report. See, e.g., *DeAndrade*,

⁹ Indeed, at oral argument, Plaintiff's counsel reduced the purported inaccuracy of the debt to the alleged fact that "Bayside breached the contract."

523 F.3d at 69 (noting that in cases in which the dispute actually is with the furnisher of credit information, the appropriate remedy is to file a note reflecting the dispute for inclusion in the credit report pursuant to § 1681i(c)); *Williams*, 826 F. Supp. at 418 (same) (citing *Cahlin v. General Motors Acceptance Corp.*, 936 F.2d 1151, 1160 n.23 (11th Cir. 1991)). Although it is immaterial to the question of whether Plaintiff in the instant case has stated a claim under § 1681i, the record reflects that Plaintiff did avail herself of the statutory remedy. *See* Terry Decl., Ex. D (letter from Plaintiff to Defendants requesting that statement of dispute be placed in Plaintiff's credit file).¹⁰

B. Description-of-procedures claims pursuant to Cal. Civ. Code § 1785.16(d)(4)

Plaintiff also alleges that Defendants failed to provide her an adequate description of the procedures they used to determine the accuracy of the disputed entry on her credit report,

¹⁰ Because Plaintiff has failed to identify any factual inaccuracy that Defendants might have discovered by conducting a reasonable investigation, the Court will not address the issue of whether it was reasonable for Defendants to rely exclusively on the furnisher of the credit information (CCS) in verifying the validity of the debt, or to withhold all of the documentation provided by Plaintiff in connection with the dispute. However, the Court notes that while there is no categorical rule requiring reporting agencies to look beyond the furnishers of credit information in conducting a reinvestigation, the agencies also are not entitled *as a matter of law* to rely on such furnishers using the CDV system. *See, e.g., Cushman v. TransUnion Corp.*, 115 F.3d 220, 225 (3d Cir. 1997) (denying defendant's motion for summary judgment in claim for failure to reinvestigate where it merely verified negative information with credit furnishers despite consumer's warning that information was inaccurate); *Henson v. CCS Credit Servs.*, 29 F.3d 280, 286-87 (7th Cir. 1994) (rejecting argument that reporting agencies have no duty to go beyond the furnisher of information in verifying credit entries); *Stevenson v. TRW Inc.*, 987 F.2d 288, 293 (5th Cir. 1993) (rejecting argument that mere verification with furnisher necessarily is adequate, and noting that "[i]n a reinvestigation of the accuracy of credit reports, a credit bureau must bear some responsibility for evaluating the accuracy of information obtained from subscribers"); *Pinner v. Schmidt*, 805 F.2d 1258, 1262 (5th Cir. 1986) (denying defendant's motion for new trial for failure to reinvestigate where consumer informed reporting agency of his personal dispute with credit grantor, yet reporting agency relied solely on credit grantor for information during investigation), *cert. denied*, 483 U.S. 1022 (1987). Rather, as the Seventh Circuit stated in its influential *Henson* decision, "whether the credit reporting agency has a duty to go beyond the original source will depend, in part, on whether the consumer has alerted the reporting agency to the possibility that the source may be unreliable or the reporting agency itself knows or should know that the source is unreliable[,] . . . [and] on the cost of verifying the accuracy of the source versus the possible harm inaccurately reported information may cause the consumer." *Henson*, 29 F.3d at 287.

1 sending her mere “boilerplate” descriptions that do not satisfy the requirements of §
2 1785.16(d)(4) of the CCRAA. Section 1785.16(d)(4) states that

3 [a] consumer credit reporting agency shall provide written notice to the consumer
4 of the results of any reinvestigation under this subdivision, . . . [including] a
5 notice that, if requested by the consumer, a description of the procedure used to
6 determine the accuracy and completeness of the information shall be provided to
the consumer by the consumer credit reporting agency, including the name,
business address, and telephone number of any furnisher of information contacted
in connection with that information.

7 No court has addressed explicitly the substantive requirements of § 1785.16(d)(4) or its federal
8 counterpart, § 1681i(a)(6)(B)(iii) & (a)(7).

9 The threshold issue facing this Court is whether Plaintiff may bring a § 1785.16(d)(4)
10 claim notwithstanding the failure of her underlying reinvestigation claim. There are reasons for
11 and against permitting an independent claim under § 1785.16(d)(4). In one respect, the
12 inaccuracy requirement under § 1681i (and hence under its California counterpart, §
13 1785.16(d)(4)) appears to be purely a judicial screening device. A consumer cannot be required
14 to demonstrate the existence of an inaccuracy in his or her credit report in order to trigger a
15 reinvestigation in the first instance. This is because a reporting agency has only one permissible
16 option to avoid reinvestigating a dispute, that is, a determination that the dispute is frivolous or
17 irrelevant. *See* 15 U.S.C. § 1681i (a)(1)(A) & (3)(A) (“the agency *shall* . . . conduct a
18 reasonable reinvestigation” except upon determining that the dispute is frivolous or irrelevant)
19 (emphasis added); Cal. Civ. Code § 1785.16(a) (“the consumer credit reporting agency *shall* . . .
20 reinvestigate and record the current status of the disputed information . . . *unless* the consumer
21 credit reporting agency has reasonable grounds to believe and determines that the dispute by the
22 consumer is frivolous or irrelevant”) (emphasis added). Courts, however, may fashion rules to
23 screen out reinvestigation claims that appear, with the benefit of hindsight and a developed
24 record, to be beyond the protection of the relevant statutes. One such rule is that a disputed
25 credit item must have been factually inaccurate, since claims stemming from *accurate* items (1)
26 would not further the statutory purpose of preventing the transmission of *inaccurate*
27 information, and (2) would be futile given the impossibility of proving damages. *See*
28 *DeAndrade*, 523 F.3d at 67-68 (discussing dual rationales for the inaccuracy requirement). This

1 understanding of the inaccuracy requirement might suggest that claims under § 1785.16(d)(4)
2 should be treated as independent of reinvestigation claims, since the FCRA and CCRAA require
3 a reinvestigation even in cases in which the disputed item turns out to be accurate.

4 Nonetheless, the rationale for imposing an inaccuracy requirement on reinvestigation
5 claims favors applying that requirement to claims under § 1681i(a)(6)(B)(iii) and its California
6 counterpart, § 1785.16(d)(4). Those provisions are tied to the underlying reinvestigation
7 requirements, and a plaintiff who cannot state a claim for inadequate reinvestigation procedures
8 logically cannot state a claim for failure to provide notice of alleged defects in those procedures.
9 Indeed, the only court to have addressed substantively either the federal or California
10 requirements with respect to descriptions of reinvestigation procedures held that where the
11 disputed entry was accurate, a description of the reporting agencies' reinvestigation procedures,
12 no matter how thorough or detailed, would not have served any purpose. *See Jianqing Wu v.*
13 *Trans Union*, Civ. No. AW-03-1290, 2006 WL 4729755, at *11 (D. Md. May 2, 2006) ("Given
14 that . . . the entries . . . were not inaccurate, the failure of Defendant to provide Plaintiff with
15 details about its reinvestigation certainly did not serve as the 'but for cause to all damages'
16 suffered by Plaintiff. Because Plaintiff cannot demonstrate that Equifax's failure to disclose its
17 reinvestigation caused him to sustain actual injuries, this Court concludes that Plaintiff cannot
18 prevail in his suit for negligent non-compliance with 15 U.S.C. § 1681i(a)(7)."); *see also*
19 *DeAndrade*, 523 F.3d at 67 (suggesting categorically that "without a showing that the reported
20 information was in fact inaccurate, a claim *brought under § 1681i* must fail" (emphasis added)).
21 In the instant case, as in *Jianqing Wu*, the disputed item underlying Plaintiff's § 1785.16(d)(4)
22 claim was accurate, and to entertain that claim would be as inconsistent with the statutes'
23 purposes as it would be futile.

24 IV. CONCLUSION

25 Because there is no genuine dispute that Plaintiff's credit report was factually accurate,
26 Defendants are entitled to judgment as a matter of law and their motions for summary judgment
27 will be granted. Plaintiff's motion for class certification will be denied as moot. Because the
28 claims Plaintiff proposes to add by amending her complaint are subject to the same inaccuracy

1 requirement that bars the claims now before the Court, her motion for leave to amend will be
2 denied on the ground that amendment would be futile.¹¹

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4 **IT IS SO ORDERED.**

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6 DATED: 12/2/08

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8 
9 JEREMY FOGEL
10 United States District Judge
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20 ¹¹ In assessing whether Plaintiff should be given leave to amend, the Court ordinarily
21 must consider “the presence or absence of undue delay, bad faith, dilatory motive, repeated
22 failure to cure deficiencies by previous amendments, undue prejudice to the opposing party[,] and
23 futility of the proposed amendment.” *Lee v. SmithKline Beecham, Inc.*, 245 F.3d 1048, 1052
24 (9th Cir. 2001) (quoting *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 538 (9th Cir.
25 1989)); *see also Foman v. Davis*, 371 U.S. 178, 182 (1962) (providing factors constraining
26 district court’s discretion to deny leave to amend). These factors, however, are “not given equal
27 weight . . . , [and] futility of amendment can, by itself, justify the denial of a motion for leave to
28 amend.” *Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995). While there is no evidence that
Plaintiff has been guilty of undue delay, bad faith, or dilatory motive, Plaintiff’s claims clearly
are foreclosed by the inaccuracy requirement of § 1681i and § 1785.16. Both the futility of
amendment and consideration of the substantial prejudice that Defendants would
suffer—particularly given the number of similar claims with which they must contend—warrant
denial of leave to amend.

1 This Order has been served upon the following persons:

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